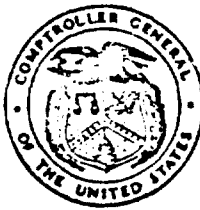


DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-211923**DATE:** September 7, 1983**MATTER OF:** John C. Lozinyak**DIGEST:**

GAO will not review the award of a permit to provide food and beverage service in a park where the permit does not involve the direct expenditure of appropriated funds and the only funds flowing to the Government from the permit is a minimal, annual charge more in the nature of a reimbursement for administrative expenses than rent for the use of Government property or payment of the approximate commercial value of the permit.

John C. Lozinyak protests the award made by the National Park Service to Good Guys Pizza and Sub of permit No. CP3300-3-0001 for the provision of food and beverage service at Glen Echo Park in Maryland. We dismiss the protest.

This Office considers protests of contract awards pursuant to its authority under Pub. L. No. 97-258, § 3526, 96 Stat. 964 (1982) (to be codified at 31 U.S.C. § 3526), to adjust and settle the Government's accounts and to certify balances in the accounts of accountable officers, under which authority we could, if necessary, take exception to contract payments. Consequently, we generally consider protests of procurements where contracts involve the expenditure of appropriated funds. See Conusstan Products, West Germany, B-210846, March 14, 1983, 83-1 CPD 253.

In certain limited circumstances, we also consider protests not involving the direct expenditure of appropriated funds, but instead involving the award of franchises where service would be provided for appropriated fund activities of the Government, see, e.g., Teleprompter of San Bernadino, Inc., B-191336, July 30, 1979, 79-2 CPD 61 (award of a franchise for cable television service); where an important direct benefit would be provided to the Government, see R & E Cablevision, B-199592, February 19, 1981, 81-1 CPD 110 (award of franchise for cable television service provided Government with secure, hurricane-resistant telecommunications link with base personnel for

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use during disaster operations); and where the Government was to receive income from the operation of the concession. See, e.g., Page Airways Incorporated; Omni Coast International, Inc., B-197896, B-197896.2, June 5, 1980, 80-1 CPD 391.

On the other hand, we will not consider protests involving awards of contracts or franchises that do not involve a direct service or benefit or income flowing to the Government. See, e.g., The Georgia Gazette Publishing Company, B-210009, December 23, 1982, 82-2 CPD 574; Arrow Transportation, Inc., B-201882, February 10, 1981, 81-1 CPD 90.

Here, we see no basis for considering the protest. There is no indication here that appropriated fund activities will procure food and beverage service from the holder of the permit. Making food and beverage service available to park visitors does not provide the same important direct benefit to the Government which procurement of a secure telecommunications link with base personnel for use during disaster operations provided in R & E Cablevision, supra. The benefit of a food and beverage service instead runs primarily to park visitors, with the Government itself and the public at large benefiting only indirectly. Also, although the holder of the permit is required to pay the National Park Service a fixed annual "franchise fee" of \$150, this appears to be more a nominal fee covering the cost of processing and administering the competition for the permit and the permit itself than a charge representing rent for the use of Government property or the approximate commercial value of the concession, as in Page Airways, supra.

The result here is governed by our decision in Jets Services, Inc., supra, in which we held that we would not review the award of a food service concession contract at the Kennedy Space Center where the only appropriated funds expended were for contract administration and no funds would flow to the Government from contract performance, with the exception of a remote possibility that the Government might be entitled to excess profits of the concessionaire. Accordingly, we will not render a decision on the merits of this protest.

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The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel